

## **CHAPTER 7. CONTRACT ADMINISTRATION**

### **SECTION 10. THE PRICE NEGOTIATION MEMORANDUM (PNM)**

**7.10.1 General.** Regulations require complete documentation and justification for issuing and negotiating all construction contract modifications. In the CSDP, justification for most modifications to the Construction Phases of the Systems Contracts will be documented through configuration management procedures and the resulting Engineering Change Proposals. All documentation supporting modifications must be clear, concise, and complete. Use CEHND Form 965a, Price Negotiation Memorandum - Construction Contracts (example attached as exhibit 7-10\*1) and attach a Resume of Negotiations to record transactions. The PNM is supporting documentation for the SF 30, and it is also a "stand alone" summary document of the contract action. The PNM is distributed with the contract modification to various Program Offices.

#### **7.10.2 Instructions for Completing PNM Forms.**

*a.* CEHND Form 965a.

(1) Information for the first five blocks can be obtained from the contract.

(2) Appropriation Data and Amount: Appropriation data and amount of funding are provided in the Miscellaneous Commitment Document, ENG Form 3039, or other funding documentation.

(3) Necessity for Change and Reason for Omission from Plans and Specifications.

(a) State why the contract must be changed and why the work is necessary. Outline the events that make the change necessary. For example: "Review of the contract drawings revealed the need to relocate door number 52 to avoid conflicts with duct work;" or, "It is necessary to relocate door number 52 to avoid relocating an existing air handling unit." It is not acceptable to state that, "The change is necessary to relocate the door," since this is simply a statement of the change being made, not the reason it must be made.

(b) Next, explain the reason (or apparent reason) for omitting the changed work from the original drawings or specifications and why the contract did not contain the requirement at award. The reason for omission should generally correspond with the appropriate cause code.

(c) Where there are multiple reasons for omission (cause code sources), separate the various categories and discuss each one separately including the necessity.

(4) Government Representatives. List names and titles of government personnel taking part in negotiations.

(5) Contractor Representatives. List names and titles of contractor personnel taking part in negotiations.

(6) Place and Date of Negotiations. List where negotiations actually conducted. If by correspondence, give beginning date and final date of letters written.

(7) Final Negotiation Price. Insert the final negotiated change price.

(8) Time Duration. Make a definite statement that (a) no additional time is required or allowed, or (b) give the exact amount of time agreed upon.

(9) Initial Government Estimate and the Basis for Upward or Downward Revision. Self-explanatory. If the change is for \$25,000 or less and a Government estimate is not prepared, insert "N/A."

(10) Do not transmit CEHND Form 965a to the contractor. Due to the nature of the information described on this first page of the PNM, it is "For Official Use Only."

*b. Resume of Negotiations.*

(1) Prepare a complete resume of the actual price negotiation proceedings. Include dates and amounts of the original and any revised proposals; the dates of negotiations; and an outline of the justification for any time extension. Include other matters of record which constitute areas of mutual understanding and contain project data, contract appendices, forms, schedules, design and other criteria, materials and equipment furnished the contractor by the Government.

(2) In order to minimize the possibility of future claims concerning impact, obtain a clear understanding from the contractor that all costs including impact on the changed and unchanged work, if any, have been considered and fully documented in the resume of negotiations portion of the price negotiation memorandum. Do not rely on the statement, "... it was mutually agreed that the (revised) proposal includes all cost and time adjustments directly or indirectly attributable to the change", as being sufficient to address impacts. Get the contractor to confirm that he has considered all costs in the settlement, including impacts on the unchanged work. Identify in as much details as possible the areas of unchanged work that are impacted by the change. Clearly state in the resume of negotiations that impacts to the work were considered, discussed, and has been included in the (revised) proposal and final costs agreed to. If there are no impacts to the unchanged work associated with the change, then so state it. If the contractor reserves his rights to impacts in a future modification or claim, then clearly state this in the resume of negotiations and insure that any impact costs included in the Government Estimate are removed for purposes of comparison with the negotiated amount. See Chapter 7, Section 3, paragraphs d. and e. (7.3.11.d. & e.), for further discussions on impact costs and addressing impacts during negotiations.

(3) If the modification is the result of an unpriced contract action, document the reasons if the definitization schedule was not met.

(4) If the negotiator does not have the authority to sign the modification, be sure to state that the proposed settlement will be recommended to the ACO or Contracting Officer for acceptance.

(5) When certified cost or pricing data are required, refer to chapter 7 for requirements to document discussion and reliance on data submitted by the contractor and variances with audit recommendations.

(6) Problem Areas in PNM Highlighted by EIG. Problems listed below have occurred in the PNM resume when cost or pricing data is required. The negotiator also must consider these points when preparing the resume for all modifications exceeding \$500,000.

(a) The resume did not explain the basis of settlement identified by cost element. A marked-up proposal, signed by the contractor, dated consistent with negotiations and referred to in the resume, is acceptable. Otherwise, the PNM should include details and cost element amounts accepted by the Government.

(b) The resume did not reconcile the settlement to the pre-negotiation objectives. You should be able to track discussion of **each** objective and how it was resolved.

(c) The resume did not resolve differences between the audit and settlement (applicable when certified cost or pricing data are required). If the audit is not followed in settlement, you must explain why.

(d) The resume did not explain what reliance was placed on the contractor's factual and judgmental data (applicable when certified cost or pricing data is required). It did not document how factual inaccuracies in the proposal or non-allowable or non-allocable costs were treated in the settlement. In summary, when cost or pricing data are required, one cannot negotiate a bottom line settlement versus the Government Estimate. Agreement on individual cost elements/profit is not required, but if the proposal contains non-allowable or non-allocable costs (see FAR 31), inaccurate "facts," or audit questioned/unsupported costs, these must be eliminated or justified. Judgmental differences can be resolved by resorting to a lump sum or bottom line basis. A post audit, if performed, must be able to determine what is in the final settlement. A price reduction can only be obtained if the Government relied on the **factual** data and used it in the final price.

(5) Signatures.

If the negotiator is the ACO, the title block on the resume should reflect "Administrative Contracting Officer." When the negotiator is not the ACO, use the negotiator's position title, i.e., "Office Engineer."

**7.10.3 Audit Resolution.** Where an audit has been performed, CD-CA will provide a copy of the PNM and the pre-negotiation objectives to the auditor.

<b>PRICE NEGOTIATION MEMORANDUM - CONSTRUCTION CONTRACTS</b>		
PROJECT DESCRIPTION AND LOCATION:	CONTRACT NO:	
CONTRACTOR NAME AND ADDRESS:	CHANGE REQ NO:	TYPE OF FIRM: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION INCORPORATED IN THE STATE OF _____
APPROPRIATION DATA AND AMOUNT:		
NECESSITY FOR CHANGE/REASON FOR OMISSION FROM ORIGINAL PLANS AND SPECIFICATIONS:		
GOVERNMENT REPRESENTATIVE (NAME AND ADDRESS):		
CONTRACTOR REPRESENTATIVES (NAME AND ADDRESS):		
PLACE AND DATE OF NEGOTIATIONS		
FINAL NEGOTIATED PRICE(S):		
TIME DURATIONS:		
INITIAL GOVERNMENT ESTIMATE/BASIS FOR UPWARD/DOWNWARD REVISION, IF APPLICABLE:		
ATTACHMENT: PRICE NEGOTIATION MEMORANDUM - RESUME OF NEGOTIATIONS		

CEHNC FORM 965a  
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Exhibit 7-10\*1 Price Negotiation Memorandum